

ORDINANCE NO. 3842

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A DEVELOPMENT AGREEMENT AND AGREEMENT OF SALE WITH CUMBERLAND ECONOMIC DEVELOPMENT CORPORATION AND CUMBERLAND GATEWAY REAL ESTATE LLC RELATIVE TO THE MARYLAND AVENUE REDEVELOPMENT PROJECT AND THE EXECUTION OF A DEED CONVEYING TO CUMBERLAND GATEWAY REAL ESTATE LLC CERTAIN SURPLUS PROPERTY CONSISTING OF 10 SEPARATE PARCELS OF REAL ESTATE IN THE PROJECT AREA IN THE CITY OF CUMBERLAND, ALLEGANY COUNTY, MARYLAND."

**WHEREAS**, Cumberland Economic Development Corporation ("CEDC") and Cumberland Gateway Real Estate LLC (the "Developer") entered into an Agreement of Sale dated March 24, 2017 relative to the sale and development of real property owned by CEDC in pursuance of the commercial development project commonly known as the Maryland Avenue Redevelopment Project;

**WHEREAS**, CEDC, the Developer and the City agree that the City should be included with respect to the Agreement of Sale relative to the hereinafter-identified Parcels, and that its terms need to be amended for the purpose of clarifying the parties' respective obligations and other provisions pertaining to the Project;

**WHEREAS**, the City, Developer and CEDC jointly drafted a Development Agreement and Agreement of Sale in order to achieve the aforesaid purposes;

**WHEREAS**, in addition to the provisions relative to the development of the properties subject to its terms, the Development Agreement and Agreement of Sale provides for

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the sale of the said Properties from the City and the CEDC to the Developer;

**WHEREAS**, the parcels of real property that will be conveyed to the Developer by the City (the "Parcels") are as follows:

<i>Address</i>	<i>Tax ID No.</i>	<i>Deed Reference / Allegany County Land Records</i>
513 Maryland Avenue	22-015516	Book 02162 / Page 00223
521/523 Maryland Avenue	22-014730	Book 02158 / Page 00351
529 Maryland Avenue	22-010735	Book 02145 / Page 00256
404 Park Street	22-011022	Book 02172 / Page 00515
406 Park Street	22-012290	Book 02137 / Page 00138
414 Park Street	22-009923	Book 02178 / Page 00369
224 Cecelia Street	22-015346	Book 02145 / Page 00261
226 Cecelia Street	22-015338	Book 02145 / Page 00261
229 Cecelia Street	22-003976	Book 02214 / Page 00416
257-259 Williams Street	04-022009	Book 02168 / Page 00011

**WHEREAS**, the Parcels were declared to be surplus property under the terms of Order No. 26,263 passed by the Mayor and City Council on March 20, 2018; and

**WHEREAS**, the Mayor and City Council of Cumberland deem the entry into the Development Agreement and Agreement of Sale and the conveyance of the Parcels to the Developer to be in the City's best interests.

**NOW, THEREFORE**

**SECTION 1:** BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor be and he is hereby authorized to execute the Development Agreement and Agreement of Sale;

**SECTION 2:** AND BE IT FURTHER ORDAINED, that the Mayor be and he is hereby authorized to execute a Deed in order to effect the conveyance of the Parcels to the Developer in accordance with the terms of the Development Agreement and Agreement of Sale;

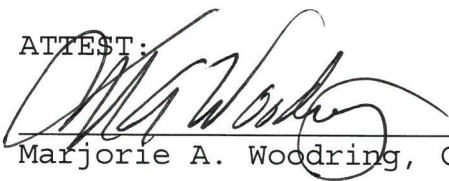
**SECTION 3:** AND BE IT FURTHER ORDAINED, that the City Solicitor be and he is hereby authorized to execute such other documents as may be required or expedient for the purpose of facilitating and completing the aforesaid conveyance;

**SECTION 4:** AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this 16th day of October, 2018.

  
\_\_\_\_\_  
Brian K. Grim, Mayor

ATTEST:

  
\_\_\_\_\_  
Marjorie A. Woodring, City Clerk

1st reading - October 2, 2018  
2nd reading - October 16, 2018  
3rd reading - October 16, 2018  
Passed 4-1

THIS DEVELOPMENT AGREEMENT AND AGREEMENT OF SALE (this “Development Agreement”), by and between CUMBERLAND ECONOMIC DEVELOPMENT CORPORATION, a Maryland corporation having its principal place of business at 60 Pershing Street, Cumberland, Maryland 21502, (the “CEDC”) and the MAYOR AND CITY COUNCIL OF CUMBERLAND, a municipal corporation of the State of Maryland (the “City”) (collectively, the “Seller”), and CUMBERLAND GATEWAY REAL ESTATE LLC, a Maryland limited liability company having its principal place of business at 117 West Patrick Street, Suite 200, Frederick, Maryland 21701 (the “Buyer”).

#### Explanation

The CEDC and Buyer entered into an Agreement of Sale dated March 24, 2017, a copy of which is attached hereto, incorporated herein, and marked as Exhibit No. 1 (the “Agreement of Sale”). Pursuant to the terms of the Agreement of Sale, a Settlement Date of August 30, 2017, was established for a sale of the Property and Additional Property by the CEDC to the Buyer (Agreement of Sale, Section 1). The Agreement of Sale contemplated the development by the Buyer of the Property and Additional Property in phases over a period of time. The Agreement of Sale, however, did not identify the nature of the development, provide specific details relating to phases of development, and failed to adequately define the rights, obligations, and commitments of the parties. The CEDC and the Buyer, as the Developer, wish to replace the Agreement of Sale with this



Development Agreement. The City joins in this Development Agreement in order to provide certain assurances to the parties, as set forth in this Development Agreement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, the Seller and Buyer do hereby agree, as follows:

## Article I

### General Provisions

Section 1.01 Explanation. The Explanation set forth above is hereby incorporated as a substantive provision of this Development Agreement.

Section 1.02 Purpose of Agreement. The purpose of this Development Agreement is to effectuate redevelopment of the Project Area located in the City of Cumberland, Allegany County, Maryland. This Development Agreement is entered into for the purpose of commercial development and not for speculation in land holding.

Section 1.03 Novation. The Seller and the Buyer enter into this Development Agreement as a novation with respect to the rights and benefits arising or relating in any way to the Agreement of Sale. The Seller and the Buyer agree that, upon execution of this Development Agreement, the Agreement of Sale shall be terminated and each party's right, title, and interest arising out of or in any way relating to the Agreement of Sale shall be extinguished. In accordance with the provisions of Section 5.10, this Development Agreement supersedes any and all prior agreements or understandings between the parties relating to the subject matter of this Development Agreement.

Section 1.04 Prohibition Against Change in Ownership of Buyer.

A. The qualifications and identities of the persons and entities comprising the Buyer are of particular concern to the Seller. It is because of these qualifications and identities that the Seller has entered into this Development Agreement. No voluntary or involuntary successor in interest of the Buyer shall acquire any rights or powers under this Development Agreement, except as expressly set forth herein. Any withdrawal or change (whether voluntary, involuntary or by operation of law) of a member or interest holder owning a controlling interest in Buyer shall be deemed to be an assignment of this Development Agreement to a third party and shall not be permitted except as set forth hereinafter. Notwithstanding the foregoing, a change of a member or interest holder owning a controlling interest in Buyer caused by the death of such member or interest holder shall not be considered an assignment of this Development Agreement to a third party.

B. Except as otherwise provided in this Development Agreement, the Buyer shall not assign all or any part of this Development Agreement to a third party without the prior written approval of the Seller, which consent the Seller may withhold within its sole and absolute discretion. Exercise of discretion by the Seller shall be based upon the proposed assignee's capability to perform the Buyer's obligations under this Development Agreement in a similar fashion as the Buyer. Any assignment of this Development Agreement without the prior written approval of the Seller is void and shall be considered to be a breach in its terms.

C. The Buyer shall promptly notify the Seller, in writing, of material change in the identity or financial condition of any principal member of the Buyer or material change among the operation and management of the officers or members of the Buyer.

Section 1.05 Defined Terms. The following terms used in this Development Agreement, unless the context otherwise requires, shall have the following meanings:

“City” shall mean the Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland.

“Declaration” shall mean those certain covenants, conditions, and restrictions (the “Declaration”) to be recorded on all Development Parcels by the Developer as more fully set forth in this Development Agreement. To the extent that the Seller has an interest in any Development Parcel, it agrees that such parcels shall be subject to the Declaration.

“Developer” shall mean Cumberland Gateway Real Estate, LLC.

“Development Agreement” shall mean the terms of this Development Agreement. The purpose of the Development Agreement is to effectuate redevelopment within the Project Area for commercial use with that redevelopment designed to complement, enhance, and serve residential and commercial properties in proximity to the Project Area.

“Development Parcels” shall mean the Property divided into phases of development in accordance with the Development Plan.

“Development Plan” shall mean the Development Plan as defined and discussed in Section 3.02 of this Development Agreement.

“Effective Date” shall mean the date that this Development Agreement is fully signed by the parties.

“Governmental Agency” shall mean any (1) governmental or quasi-governmental entity of any nature, including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, taxing authority or unit and any court or other tribunal (foreign, federal, state or local), or (2) person, or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

“Governmental Approval” shall mean a permit, license, certificate, franchise, concession, approval, consent, ratification, permission, clearance, confirmation, endorsement, waiver, certification, filing, franchise, notice, variance, right, designation, rating, registration, qualification, authorization or order that is or has been issued, granted, given or otherwise made available by or under the authority of any Governmental Agency or pursuant to any Law.

“Laws” shall mean all laws, rules, regulations, ordinances, resolutions, adopted guidelines, and official policies of governmental entities.

“Permits and Approvals” shall mean the permits and approvals for the Project or each phase thereof that are required for the development of the Project or the particular phase that is being developed (other than building permits), as the case may be, that is needed for public access and the development of a particular phase. Said Permits and Approvals shall be consistent with City standards.

“Project” shall mean the acquisition, development, sale, disposition, and/or management of the Development Parcels as contemplated by this Development Agreement.

“Project Area” shall mean the area bounded by Emily Street, Maryland Avenue, Williams Street, and Park Avenue, as well as several parcels located on Williams Street adjacent to the bounded area, all as identified on Exhibit No. 2, attached hereto, incorporated herein, and marked as “Project Area Exhibit No. 2.”

“Project Property” shall mean the Property.

“Property” shall mean all those properties identified and included in the Project Area attached hereto, incorporated herein, and marked as Exhibit No. 3.

“Seller” shall mean CEDC and the City. Any and all rights and remedies of the Seller under the terms of this Development Agreement may be invoked by CEDC and the City individually or jointly with one another. Wherever the consent of the Seller is required herein, the consent of CEDC and the City must be obtained.

Section 1.06 Additional Defined Terms. To the extent that any capitalized terms contained in this Development Agreement are not defined above, then such terms shall have the meaning otherwise described to them in this Development Agreement.

## Article II

### Agreement of Sale

Section 2.01 Sale of Property. Seller agrees to sell and convey and Buyer agrees to purchase and acquire the Property.

Section 2.02 Exceptions to Title. Seller shall convey and Buyer shall accept the Property subject to (i) all zoning ordinances and regulations and (ii) all covenants, conditions, restrictions, easements and other matters approved or waived by Buyer pursuant to Section 2.05.

Section 2.03 Purchase Price. The Purchase Price for the Property is Six Hundred Thousand Dollars (\$600,000.00)(the “Purchase Price”), together with:

A. The assumption by the Buyer of the obligations set forth in Article III of this Development Agreement entitled “Development Provisions.” The assumption of the obligations and requirements of the Development Provisions are a material consideration for the sale of the Property; accordingly, the terms, conditions, and obligations of this Development Agreement shall survive closing and shall be deemed to be covenants which run with the land for the period commencing upon the Effective Date and concluding at such time the Developer has satisfied all of its obligations under this Development Agreement, subject to extension and earlier termination as set forth herein. Notwithstanding the foregoing, those restrictions and reservations set forth on Exhibit No. 4, Paragraph 1 shall run with the land in perpetuity and those restrictions and reservations set forth on Exhibit No. 4, Paragraph 2 shall run with the land for a period of ten (10) years from the date of the deed from Seller.

B. The execution at closing of a Promissory Note in the original principal amount of Six Hundred Thousand Dollars (\$600,000);

C. The execution at closing of a Deed of Trust to be secured by the Property in favor of the Seller, in the total amount of Six Hundred Thousand Dollars (\$600,000.00) (the "Security").

D. The Purchase Price shall be forgiven and the Security shall be released upon performance by the Buyer, as follows:

1. Upon completion of Phase 1 of the Project, as contemplated by Section 3.01, and the issuance of a Use and Occupancy Permit to the Buyer or Buyer's tenant for Phase 1, the Seller shall reduce the principal balance of the Promissory Note to Four Hundred Thousand Dollars (\$400,000.00);

2. Upon completion of Phase 2 of the Project, as contemplated by Section 3.01, and the issuance of a Use and Occupancy Permit to the Buyer or Buyer's tenant for Phase 2, the Seller shall reduce the principal balance of the Promissory Note to Two Hundred Thousand Dollars (\$200,000.00);

3. Upon completion of Phase 3 of the Project, as contemplated by Section 3.01, and the issuance of a Use and Occupancy Permit to the Buyer or Buyer's tenant for Phase 3, the Promissory Note and Deed of Trust shall be reflected as fully paid and satisfied; and

4. The Seller agrees to subordinate the Deed of Trust to permit the Buyer to obtain and secure construction financing for the Project.

E. Upon execution of this Development Agreement, the Buyer and its representatives and agents shall have reasonable access to the Property and the right to

conduct, at Buyer's sole cost and expense, reasonable inspections and investigations of the Property.

Section 2.04 Proration of Taxes and Utilities. All taxes and assessments becoming due and accruing during the fiscal year in which the Deed is delivered shall be prorated between the Seller and the Buyer as of the Closing Date. If the amount of any such tax or assessment to be prorated cannot then be ascertained, the proration shall be computed on the amount of such tax or assessment for the preceding year. If the amount of tax assessments is based upon the preceding year, then such proration shall not be adjusted when actual amounts of tax assessments are available.

Section 2.05 Title Commitment: Objections. Buyer shall arrange and pay for such examination of the title to the Property as Buyer deems necessary. Failure to obtain such examination or to report to Seller any title objections shall constitute a waiver by Buyer of any and all title defects affecting Buyer's obligation to purchase and Seller's liabilities as Seller. Any substantial defects in title which render title unmarketable must be reported to Seller in writing within thirty (30) days from the Effective Date of this Development Agreement.

If Seller has not cured all substantial defects (other than liens to be released at closing) within thirty (30) days from Buyer's notice to Seller, Buyer shall have the option, in its sole discretion, of (i) taking such title as Seller can deliver without abatement of the Purchase Price, (ii) applying so much of the Purchase Price as is necessary to perfect title, or (iii) terminating this Development Agreement, whereupon



Seller and Buyer shall be completely discharged from all liability or obligation arising out of this Development Agreement.

Section 2.06 Closing. The following documents shall be delivered by Seller to Buyer within the later of, thirty (30) days from the Effective Date or sixty (60) days of the Effective Date in the event of a substantial defect in title which renders title unmarketable provided the Seller has elected to take such title as Seller can deliver without abatement of the Purchase Price or apply so much of the Purchase Price as is necessary to perfect title, (the "Closing Date"):

A. A special warranty deed or deeds (collectively the "Deed") conveying fee simple title to Buyer or its designee, subject only to permitted liens;

B. An IRS Form 1099S Disclosure Statement (if required under the Internal Revenue Code);

C. A closing settlement statement;

D. An owner's affidavit that shall, among other things, contain such certifications as reasonably required by the Title Insurer to issue a standard title insurance policy;

E. Certificate duly executed by Seller setting forth Seller's address and tax identification numbers and certifying that Seller is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA) and any similar certificate required under applicable Federal or State Law;

F. Any and all other documents reasonably requested by Buyer; and

G. Seller shall bear the cost to prepare the Deed, and Buyer shall bear the cost of recording the Deed and all other recordation and transfer taxes due at Closing.

Section 2.07 Seller's Documents. The Seller shall provide all property documents in its possession within ten (10) days of the Effective Date, which shall include, but not be limited to, all surveys, plats, environmental studies, title abstracts and title insurance binders.

Section 2.08 Disclaimer of Representations and Warranties. Buyer represents that it has fully inspected the Property. Seller makes no representations or warranties with respect to the Property, either express or implied (other than the special warranty of title in the Deed.) Buyer accepts the Property "AS IS," as described in Section 4.01. It is specifically agreed that the provisions of this paragraph shall survive the closing and delivery of the Deed.

### Article III

#### Development Provisions

Section 3.01 Use of the Property. The Property shall be utilized and may only be used by the Buyer in accordance with these Development Provisions. Any and all development of the Property shall be subject to the following:

A. The Property shall be developed in phases which may be equal or unequal in size. The use of the term "phases" is intended to permit the development of the Property to the maximum economic advantage of the Developer and to establish an orderly process for the overall development of the Project Area. The parties reasonably anticipate three (3) to five (5) phases of development;

B. Within six (6) months of the Closing Date, the Buyer shall file with the City a proposed Development Plan for the Project and Project Area;

C. Within twelve (12) months of the Closing Date, the Buyer shall file with the City all engineering and building permit applications required by City Code (the "Code") for the construction and operation of Phase 1 of the Project;

D. Within eighteen (18) months of the Closing Date, the Buyer shall have secured all Governmental Approvals required by the Code and in compliance with the provisions of the Code and Maryland law for the construction and operation of Phase 1;

E. Within twenty-four (24) months of the Closing Date, Phase 1 shall be fully completed and developed, and Buyer or Buyer's tenant shall have obtained a Use and Occupancy Permit for the same;

F. Each additional phase shall be fully completed and developed, and the Buyer or Buyer's tenant shall have obtained a Use and Occupancy Permit for the phase, within six (6) months of the sooner to occur of: (i) the issuance of a Use and Occupancy Permit for the preceding phase, or (ii) the deadline for completion of the prior phase.

G. It shall be the duty of the Buyer to apply for, and pursue the issuance of, all permits and Governmental Approvals in a commercially reasonable and timely manner to ensure the development of the Project in the phases anticipated by this Development Agreement. If, through no fault of the Buyer, a delay is caused with respect to the securing of all Governmental Approvals for the construction and operation of a particular phase, then the deadline to complete such phase shall be extended by an equal period of time as the delay.

Section 3.02 Development Plan. The Developer's proposed Development Plan shall be subject to the City's approval, which shall not be unreasonably withheld. The City may, but shall not be required to, approve a Development Plan that lacks the desired or necessary level of specificity as to a particular matter. If the City elects to do so, the parties shall memorialize in the Development Plan the nature of the matter lacking specificity, the manner in which the matter shall be addressed by the parties, and the timetable for addressing the matter. The City may withhold Permits and Approvals until such time as it approves the Development Plan and, with respect to any matter deferred in the plan due to a lack of specificity, the City may withhold Permits and Approvals pertaining to the deferred matter until the matter is addressed consistent with the plan. If, through no fault of the Buyer, a delay is caused with respect to the City's approval of the Development Plan or any portion thereof, then the deadline to complete an affected phase of development shall be extended by an equal period of time as the delay. The Project shall be constructed and developed in accordance with the terms of the Development Plan. The Development Plan shall include, without limitation,

A. Site plan depicting, among other things, the location and dimensions of all building pad(s), the location, type and amount of parking, and the means of ingress and egress into the development;

B. Aesthetic design concept plan, including, location and nature of signage, location and nature of foliage, color and type of building improvements, and other aesthetic design features of the development.

C. Traffic impact study, if required by the State Highway Department;

D. Concept plan for improvements, changes and additions to any public easement or right-of-way;

E. Stormwater management concept plan;

F. Concept plan for improvements, changes and additions to public utilities, water and sewage infrastructure servicing the development;

G. Summary of all rules and restrictions the Developer intends to impose upon the development;

H. Schedule for and explanation of the various phases of development, including the contemplated commercial uses for each phase; and

I. Reasonable provisions to afford the Developer the right to transfer units of square footages and density between phases, planning areas and separate location within the Project Area, and location and relocation of uses within the development.

Section 3.03 Fast Track Approval. The City and Developer agree that the effective development of the Project Area requires a fast track approval process for all phases of the Project. The City agrees to implement such reasonable procedures consistent with applicable Laws to facilitate the foregoing.

Section 3.04 Covenants, Conditions, and Restrictions. Developer shall create covenants, conditions, and restrictions in the form of a Declaration to be recorded on all Development Parcels. The Declaration may include exclusive agreements with third parties for the offering of their services within the Development Parcels and shall include, at a minimum, those restrictions and reservations set forth on Exhibit No. 4, attached

hereto and incorporated herein. The Declaration shall be subject to the approval of the Seller, which shall not be unreasonably withheld.

Section 3.05 Costs of Construction and Other Costs. Except as otherwise provided in this Development Agreement, the costs of developing the Project, including, without limitation, the construction of improvements as identified in the Development Plan, shall be borne by Developer and/or third parties procured by Developer.

Except as otherwise provided in this Development Agreement, Developer shall, at its sole cost and expense, cause to be prepared, and shall pay any and all fees pertaining to the review and approval of the Development Plan by the City and all required construction, planning, and other documents reasonably required by any governmental authority relating to the development of the Development Parcels hereunder, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, and design review documents.

Except as otherwise provided in this Development Agreement, Developer shall pay for any and all costs concerning the design, construction, relocation and securing of permits for utility improvements and connections, including sewers and sewer lines, power lines and poles, water lines, gas lines, cable lines and related vaults, storm drains and vaults, traffic access ways, lighting poles and standards, handicapped access ramps, construction of tree wells and planting of trees. The Developer shall obtain any and all necessary approvals prior to the commencement of applicable portions of said construction, and such parties shall take reasonable precautions as the Developer sees fit to ensure the safety and stability of surrounding properties during said construction.

Section 3.06 Operating Memoranda. The parties acknowledge that the provisions of this Development Agreement require a close degree of cooperation between and amongst the parties, and the refinements and future events may demonstrate that non-material changes are appropriate with respect to the detail of performance of the parties under this Development Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of the parties under this Development Agreement. If and when, from time to time during the Term hereof, the parties find that such changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustments through operating memoranda reasonably approved by the parties which, after execution, shall be attached hereto as addenda and become a part of this Development Agreement, and may be further changed and amended from time to time as necessary, with further approval by the parties.

Section 3.07 Other Governmental Permits. Developer shall apply from time to time for other Permits and Approvals as may be required by any other Governmental Agency having jurisdiction over the Project in connection with the development of, or provision of services to, the Project. Seller shall fully cooperate with Developer in its efforts to expedite obtaining such Permits and Approvals in an efficient and timely manner, and provide any documents or certificates reasonably required to process and obtain such Permits and Approvals. This provision shall not be interpreted to require that the City issue or grant any Permits and Approvals if the applications therefor fail to satisfy legal requirements for the issuance or granting of the same.

Section 3.08 Cooperation in the Event of Legal Challenge. If any legal or equitable action or other proceeding is brought by any individual, business entity, governmental entity or official challenging the validity of any provision of this Development Agreement, the parties to this Development Agreement shall cooperate in defending such action or proceeding, including, a good faith attempt to select a mutually agreeable legal representative. Developer and Seller shall each pay one-half the cost of a joint defense. If the parties cannot agree on a joint defense or upon the same legal counsel, then each party shall bear its own costs of such defense.

Section 3.09 Initial Term. The term of this Development Agreement (the “Term”) shall be equal to that period of time which commences upon the Effective Date and concludes at such time the Developer has satisfied all of its obligations under this Development Agreement, subject to extension and earlier termination as set forth herein. In the event of an administrative appeal or judicial proceeding related to this Development Agreement, the Term and any associated milestone requirement shall automatically be tolled from the date of filing through the date the ruling on the matter becomes final and unappealable.

Section 3.10 Termination and Default. Should a party be in material default under the terms of this Development Agreement, the other party shall provide the party in default with written notice of default and the defaulting party shall have ninety (90) days from the date of such notice (“Cure Period”) to substantially cure the default. In the event of the defaulting party’s failure to substantially cure the default within the Cure Period, then the other party shall have all rights in law and equity, including, but not



limited to, the right of specific performance. For the purposes of this Section, failure on the part of the parties to reach a consensus on an issue not defined by or specifically required in this Development Agreement or covered by the Development Plan, including, but not limited to, specific design, development, or technical issues, shall not constitute a material default.

In the event Seller terminates this Development Agreement upon Developer's failure to cure a material default within the Cure Period: (a) Seller shall have no further obligations to Developer pursuant to this Development Agreement; (b) title to any portion of the Property not then subject to a use and occupancy permit shall immediately and without the necessity of any further action revert to and revest in either the CEDC or the City (depending upon which of them held title to the individual parcels thereof as of the Effective Date of this Development Agreement), free and clear of all claims by the Developer; and (c) Developer shall lose and forfeit all of its rights, title and interest in and to the applicable Property and to the improvements, fixtures, rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining. In furtherance of the title reverter provisions set forth in the preceding sentence, (1) the Developer, through its members, hereby appoints Jeffrey D. Rhodes, City Administrator of the City of Cumberland, and his successor City Administrators, its true and lawful attorney in fact, with full power of substitution, hereby granting them full power and authority for it and in its stead to execute and deliver a deed or deeds to the applicable portions of the Property to the CEDC and/or the City in the event the Developer fails to cure any defaults in the manner aforesaid and to do any and all acts required in order to

effect the said conveyance(s); and (2) alternatively, the Developer hereby authorizes and empowers Jeffrey D. Rhodes, City Administrator of the City of Cumberland, and his successor City Administrators, as its authorized signatories, to execute and deliver a deed or deeds to the applicable portions of the Property to the CEDC and/or the City in the event the Developer fails to cure any defaults in the manner aforesaid and to do any and all acts required in order to effect the said conveyance.

Section 3.11 Developer Covenants. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, ancestry, national origin, gender identity or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development Parcels or this Project, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number use or occupancy of tenants, leases, subtenants, sublessees, or vendees of the Development Parcels.

Section 3.12. Seller Post Closing Requirements.

A. Other than financially, CEDC agrees to support the Buyer's efforts to develop the Property in accordance with this Development Agreement and the Development Plan, and to support the Buyer's efforts consistent therewith to close streets, alleys and rights of way that bifurcate or that are adjacent to some of the Property (the "Roads"). The provisions of this subsection shall survive closing.

B. The City agrees to provide the Buyer with access to public utilities under its control, as required by law; and

C. CEDC agrees to provide Buyer with access to and use of all rights of way, easements or other property interests it owns or possesses adjacent to or within the Project Area. The City agrees to provide Buyer with the access to and use of all rights of way, easements or other property interests it owns or possesses adjacent to or within the Project Area it provides to others.

Section 3.13 Transfers of Development Parcels. After first obtaining the written consent of the Seller, which may be withheld, delayed, or conditioned by the Seller, in its sole discretion, for any reason or no reason at all, Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Development Agreement or in the Development Parcels to a third party who acquires an interest or estate in the Development Parcels or any portion thereof. If all or any of the portion of the Development Parcels is transferred by Developer to any person or entity, the transferee shall, to the extent relinquished by Developer, succeed to all of Developer's rights under this Development Agreement as they affect the right to proceed with development of that portion of the Development Parcels transferred to the transferee (the "Transferred Development Parcels"), and, to the extent assigned by Developer, the transferee shall assume all obligations of Developer hereunder which relate to the Transferred Development Parcels. A transfer made in compliance with this Section of all or any part of the Development Parcels to any other person or entity shall release

Developer from its obligations hereunder, which relate to the Transferred Development Parcels.

Section 3.14 Real Estate Taxes. The City entered this Development Agreement for the purpose of, among other things, increasing the amount of real estate taxes collected by the City with respect to the Property and Project Area. Consistent with the foregoing, and in consideration of the mutual covenants and conditions contained in this Development Agreement, neither the Developer nor any successor-in-interest to the Developer with respect to this Development Agreement and the Property shall apply for, accept or utilize any incentive, credit, abatement, offset, rebate, refund or other program that would result in the reduction or elimination of (a) the full assessed value of the Property, any other real estate in the Project Area, and any improvements within the Project area; and (b) real estate taxes due and payable to the City based upon the full assessed value of the Property, any other real estate in the Project Area, and any improvements within the Project area. Nothing contained in this section shall be interpreted or construed to prohibit the Developer from taking full advantage of any program that would result in a reduction or elimination of the Developer's or its successor-in-interest's real estate taxes that are due and payable to any entity other than the City with regard to the Property and any other real estate in the Project Area.

#### Article IV

##### Representations and Warranties

Section 4.01 Representations and Warranties of Seller. In order to induce Buyer to enter into this Development Agreement and consummate the transactions contemplated

hereby (the "Transactions"), Seller hereby represents and warrants to Buyer, as of the date hereof, as follows:

A. This Development Agreement and each of the other documents to be delivered hereunder (the "Transaction Documents") to which Seller is a party constitutes, or will constitute, when executed and delivered, a valid and binding agreement of Seller enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other Laws relating to or affecting the enforcement of creditors rights and remedies generally and the availability of specific performance or other equitable remedies. Seller is not required to obtain any approvals under its organizational documents or any consent from any third party in connection with the execution and delivery of this Development Agreement or the consummation of the Transactions.

B. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING PROVISIONS OF THIS SECTION 4.01 OR IN THE TRANSACTION DOCUMENTS, ALL ASSETS CONVEYED PURSUANT TO THIS DEVELOPMENT AGREEMENT WILL BE CONVEYED ON AN "AS IS," "WHERE IS," "WITH ALL FAULTS" BASIS AND WITHOUT ANY ADDITIONAL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OPERABILITY, CAPACITY OR CONDITION.

Section 4.02 Representations and Warranties of Buyer. In order to induce Seller to enter into this Development Agreement and consummate the Transactions, Buyer represents and warrants to Seller, as follows:

A. This Development Agreement and each of the Transaction Documents to which Buyer is a party constitutes, or will constitute, when executed and delivered, a valid and binding agreement of Buyer enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other Laws relating to or affecting the enforcement of creditors rights and remedies generally and the availability of specific performance or other equitable remedies. Buyer is not required to obtain any approvals under its organizational documents or any consent from any third party in connection with the execution and delivery of this Development Agreement or the consummation of the Transactions that could be reasonably expected to be material to the consummation of the Transactions.

## Article V

### Miscellaneous Provisions

Section 5.01 Severability. If any provision of this Development Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable then, to the extent that the invalidity or unenforceability does not impair the application of this Development Agreement as intended by the parties, the remaining provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect.

Section 5.02 Permits and Approval Independent. All Permits and Approvals, and all land use entitlements or approvals generally which may be issued or granted by the City with respect to the Development Parcels, constitute independent actions and approvals by the City. If any provision of this Development Agreement or the application of any provision of this Development Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the Seller terminates this Development Agreement for any reason, then such invalidity, unenforceability or termination of this Development Agreement or any part hereof shall not affect the validity or effectiveness of any Permits and Approvals or other land use approvals. In such cases, such approvals will remain in effect pursuant to their own terms, provisions, and conditions of approval.

Section 5.03 Further Actions. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Development Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 5.04 Construction. This Development Agreement has been reviewed and revised by legal counsel for both Developer and the Seller, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Development Agreement.

Section 5.05 Notices. Any notice under this Development Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail, facsimile or email, return receipt requested. Any notice given by mail

must be sent, postage prepaid, by certified or registered mail, return receipt requested.

All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing.

If to Seller: Cumberland Economic Development Corporation  
c/o Paul J. Kelly, Jr.  
Executive Director  
60 Pershing Street  
Cumberland, Maryland 21502  
Email: paulkelly@choosecumberland.org

With a copy to: Gorman E. Getty, III, Esquire  
Gorman E. Getty, III, P.A.  
23 Washington Street  
Post Office Box 1485  
Cumberland, Maryland 21501-1485  
Email: ggetty@ggettylaw.com

If to Buyer: Cumberland Gateway Real Estate, LLC  
c/o Kline Scott Visco  
Attn: Edward D. Scott  
117 West Patrick Street, Suite 200  
Frederick, Maryland 21701  
Email: eds1957@icloud.com

With a copy to: Manekin Corporation  
Attn: Richard Alter  
5850 Waterloo Rd.  
Columbia, Maryland 21045  
Email: ralter@manekin.com

If to the City: Mayor & City Council of Cumberland  
c/o Brian K. Grim, Mayor  
57 North Liberty Street  
Cumberland, Maryland 21502  
Email: [briangrim@verizon.net](mailto:briangrim@verizon.net)

With a copy to: Michael Scott Cohen, Esquire  
City Solicitor  
213 Washington Street  
Cumberland, Maryland 21502



Email: michaelcohen@atlanticbbn.net

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one (1) Business Day after deposit with the courier service, and if mailed, two (2) Business Days after deposit at any post office in the United States of America, and if delivered via facsimile or email, the same day as verified, provided that any verification that occurs after 7:00 p.m. (Eastern Time) on the following Business Day.

Section 5.06 Partnership or Joint Venture. Nothing in this Development Agreement shall be construed to render the Seller in any way or for any purposes a partner, joint venture or associate in any relationship with Developer nor shall this Development Agreement be construed to authorize either to act as the agent for the other.

Section 5.07 Estoppel Certificate. Within five (5) days following any written request which either party may make from time to time, the other party to this Development Agreement shall execute and deliver to the requesting party a statement certifying that: (1) this Development Agreement is unmodified and in full force and effect; (2) there are no current uncured defaults under this Development Agreement or specifying the dates and nature of any such default; and (c) any other reasonable information requested.

Section 5.08 No Third Party Beneficiary. This Development Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other party shall have any right of action based upon any provision of this Development Agreement.

Section 5.09 Governing Law. This Development Agreement shall be governed and construed in accordance with the Laws of the State of Maryland, and venue and jurisdiction of any action arising out of or relating to this Development Agreement shall lie in Allegany County, Maryland.

Section 5.10 Entire Agreement. This Development Agreement and the Exhibits hereto constitute the entire agreement between the parties with respect to the purchase and sale of the Development Parcels, and supersedes all prior agreements and understandings between the parties relating to the subject matter of this Development Agreement.

Section 5.11 Dispute Costs. In the event any dispute between the parties with respect to this Development Agreement results in litigation or other proceedings, the prevailing party shall be reimbursed by the party not prevailing in such proceeding for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, experts' fees, and costs incurred by the prevailing party in connection with such litigation or other proceeding and any appeal thereof. Such costs, expenses, and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any.

Section 5.12 Waiver. Neither the Seller's nor Developer's waiver of the breach of any covenant under this Development Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

Section 5.13 Non-Merger. The terms, conditions, and provisions of this Development Agreement shall not be deemed merged into any deed, and shall survive closing and continue in full force and effect.

Section 5.14 Business Day. A “Business Day” is a day which is not a Saturday, Sunday, or legal holiday recognized by the Government of the United States of America. Furthermore, if any date upon which or by which action is required under this Development Agreement is a Saturday, Sunday, or legal holiday recognized by the Government of the United States of America, then the date for such action shall be extended to the first day that is after such date and is not a Saturday Sunday, or legal holiday recognized by the Government of the United States of America. In addition to the foregoing, if the date designated as the Closing Date is a Saturday, Sunday, or legal holiday recognized by the State or other jurisdiction in which the closing is to occur or in which the real property is located, then the Closing Date shall be the first day that is after such date and is not a Saturday, Sunday or legal holiday recognized by the Government of the United States or such State or jurisdiction. Unless the term “Business Day” is used, all references in this Development Agreement to days or other time periods shall mean calendar days or periods.

Section 5.15 Plurality and Gender. Wherever in this Development Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

Section 5.16 Counterparts and Exhibits. This Development Agreement is executed in counterparts, each of which is deemed to be an original.

Section 5.17 Permitted Delays/Force Majeure. In addition to any other specific provisions of this Development Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, war, terrorism, picketing, or other labor disputes, shortage of materials or supplies, unanticipated conditions in the economy, damage to work in progress by reason of fire, floods, earthquake or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), any governmental actions or failure to act litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

Section 5.18 Recordation. It is the parties' intention to record this Development Agreement among the Land Records of Allegany County, Maryland. The costs of recordation, if any, shall be borne by the Developer.

WITNESS the hands and seals of the parties hereto the day and year first above written.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

ATTEST:

CUMBERLAND ECONOMIC  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
Secretary

By \_\_\_\_\_ (SEAL)  
Paul J. Kelly, Jr., Executive Director &  
President

STATE OF MARYLAND,  
ALLEGANY COUNTY, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Paul J. Kelly, Jr., known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Executive Director and President of Cumberland Economic Development Corporation, a Maryland corporation, and acknowledged the foregoing to be the act and deed of the said corporation; and at the same time made oath he is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

ATTEST:

MAYOR AND CITY COUNCIL OF  
CUMBERLAND, MARYLAND

\_\_\_\_\_  
Clerk

By \_\_\_\_\_ (SEAL)  
Brian K. Grim, Mayor

STATE OF MARYLAND,  
ALLEGANY COUNTY, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Brian K. Grim, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

ATTEST:

CUMBERLAND GATEWAY REAL  
ESTATE, LLC

\_\_\_\_\_ By \_\_\_\_\_ (SEAL)  
Managing Member

\_\_\_\_\_  
First Witness signature

\_\_\_\_\_  
First Witness printed name

\_\_\_\_\_  
First Witness address

\_\_\_\_\_  
Second Witness signature

\_\_\_\_\_  
Second Witness printed name

\_\_\_\_\_  
Second Witness address

STATE OF MARYLAND,  
FREDERICK COUNTY, TO WIT:

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Managing Member of Cumberland Gateway Real Estate, LLC, a Maryland limited liability company, and acknowledged the foregoing to be the act and deed of the said limited liability company; and at the same time made oath he is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**AGREEMENT OF SALE**

THIS AGREEMENT OF SALE ("Agreement"), made this 24 day of March, 2017, (the "Effective Date") by and between The Cumberland Economic Development Corporation ("Seller"), whose address is 60 Pershing Street, Cumberland, MD 21502 and Cumberland Gateway Real Estate LLC and/or assigns ("Purchaser" or "Buyer"), whose address is c/o Kline Scott Visco, 117 West Patrick Street, Suite 200, Frederick, MD 21701. A deposit of One Thousand Dollars (\$1,000.00) ("Deposit") has been received from Purchaser in the form of a check and to be placed in escrow with Robinson & Robinson, Attorney ("Escrow Agent") upon ratification and is to be applied as part payment of the purchase price for the properties together with any improvements thereon as described and defined in EXHIBIT A (the "Property") and EXHIBIT B (the "Additional Property"), ATTACHED hereto, located in Cumberland, Maryland, together with all streets, rights-of-way, and easements contiguous to the Property and the Additional Property, for the purchase price of One Thousand (\$1,000.00) Dollars, cash to be paid on the date of settlement as defined herein together with other good and valuable consideration.

1        **SETTLEMENT AND PURCHASER PERFORMANCE ESCROW:** The Seller agrees to deed the Property and the Additional Property to the Purchaser and Purchaser agrees to pay Seller the Purchase Price as provided herein on or before August 30, 2017 (the "Settlement" or "Settlement Date") which may be extended by written agreement of the parties.

Buyer shall also deliver at Settlement an Indemnity Deed of Trust to be secured by the Property and Additional Property and/or other security reasonably required by counsel for Seller.



and in a form reasonably required by the counsel for Seller, in the amount of Six Hundred Thousand Dollars (\$600,000.00) (the "Security") insuring performance by the Buyer as follows:

A. That at least thirty-five percent (35%) of the Property and Additional Property shall be fully developed for commercial purposes within two (2) years of the Settlement Date ("Phase One"). Upon the issuance of a Use and Occupancy Permit to the Buyer for Phase One, Seller shall reduce the Security to \$400,000.00.

B. That at least thirty percent (30%) more of the Property and Additional Property shall be fully developed for commercial purposes within four (4) years of the Settlement Date ("Phase Two"). Upon the issuance of a Use and Occupancy Permit to the Buyer for Phase Two, Seller shall reduce the security to \$200,000.00.

C. That the remaining thirty-five percent (35%) of the Property and Additional Property shall be fully developed for commercial purposes within six (6) years of the Settlement Date ("Phase Three" or the "Final Phase"). Upon the issuance of a Use and Occupancy Permit to the Buyer for Phase Three or the Final Phase, Seller shall release the Security.

D. Prior to the Settlement Date, the Seller shall demolish all structures remaining on the Property and the Additional Property and grade all lots with compatible fill at least thirty-six inches (36") below finish grade to a similar elevation as of the date of this Agreement.

E. The deadline for the completion of Phase One, Phase Two or the Final Phase as indicated above may be extended by the Seller for a period not to exceed two (2) years in the event any governmental agency refuses to grant the necessary approvals and permits necessary for the Buyer to commence work provided, however, that the Buyer has made diligent and commercially reasonable efforts to secure all such approvals and permits.

F. The deadline for the completion of Phase One, Phase Two or the Final Phase may be extended by Seller for a period not to exceed one (1) year in the event litigation is filed by any

third party to prevent the development of the Property and/or Additional Property as provided herein.

2. TITLE CONVEYANCE: The Seller agrees to provide a deed for the Property containing covenants of special warranty and further assurance which shall be executed at the expense of the Seller, and which shall convey the Property to the Purchaser subject to reservations, restrictions and requirements of record and as provided herein. Title to be good and merchantable, free of liens and encumbrances, subject to Section 3 of this Agreement. There shall be no leases in effect on any of the Property at Settlement.

3. TITLE DEFECT: Purchaser shall cause an examination of the Title to the Property and the Additional Property within the first fifteen (15) days after the last date on which this Agreement has been executed by Seller and Purchaser (the "Ratification Date") and notify Seller of any defects(s) in the title within said fifteen (15) days. Seller agrees to remove the lien of any deed of trust or mortgages encumbering the Property and Additional Property at Settlement. In the event Purchaser does not notify Seller within said period, then the title shall be deemed acceptable to Purchaser. In the event Purchaser does notify Seller of a defect(s) in accordance with the provisions of this Agreement, Seller shall be entitled to either remove the defect(s) in title or choose not to remove defect(s) by giving notice to Purchaser of Seller's intention not to remove any defects in Title. If the notification is given to Purchaser that Seller intends not to remove defects then Purchaser shall have the right within five (5) days after notice is received from Seller, to either rescind this Agreement, in which case all Deposits made on account of the purchase price shall be refunded to Purchaser and this Agreement shall become null and void or settle on part of the Property that has no title defects and adjourn Settlement on the remainder of the Property until

said title defects are removed, or waive any Title defects and remove any contingencies in this Agreement for Settlement regarding said defect(s). Seller shall be held harmless and shall not be liable for damages by reason of any defect in title or in the event Seller chooses not to correct any defect(s). In the event Purchaser does not notify Seller of its intention within five (5) days, then Purchaser's right to rescind shall expire and Settlement shall occur with defect(s) not cured.

4. ADJUSTMENT/PRO-RATION: Rents, all taxes, and all other public charges against the Property shall be pro-rated to the date of Settlement. Sellers shall provide a deed and pay any outstanding real estate taxes. Purchaser shall pay all other costs; such as, but not limited to, title examination, title insurance, financing costs, recording costs, half of recordation taxes/stamps (which shall be calculated based on a \$300,000.00 transfer valuation), and Settlement fees.

5. POSSESSION: Possession shall be given immediately after Settlement. The Seller will deliver possession of the Property subject to Seller's Post Closing Requirements contained in Section 9 of this Agreement and Purchaser's Post Closing Requirements contained in Section 10 of the Agreement.

6. ADDITIONAL PROPERTY CONVEYANCE: In consideration of the sum of Five Dollars (\$5.00) per lot, Seller shall convey to Buyer parcels currently owned by the Mayor & City Council of Cumberland set forth in Exhibit B (the "Additional Property") subject to the same reservations and conditions as the Property conveyed by and owned by Seller. The Additional Property shall be conveyed to Buyer at Settlement of the Property or within five (5) business days after conveyance of the Additional Property by Mayor & Council of Cumberland to Seller,

whichever shall be the later to occur. Seller shall act diligently to cause the Mayor and City Council of Cumberland to convey the Additional Property to Seller. If the Mayor and City Council of Cumberland refuses to do so, Purchaser may declare this Agreement null and void whereupon the Deposit shall be returned to Purchaser and neither Seller nor Purchaser shall have any further obligation to the other under this Agreement.

7. RESTRICTIONS: All Property shall be made subject to the reservations and restrictions on Exhibit C, which said reservations and restrictions shall be binding on the Buyer, its successors and assigns, and shall be deemed to run with the land in perpetuity except as provided in Section Two of Exhibit C.

8. SELLER DOCUMENTS: Within five (5) days of Seller's execution of this Agreement of Sale, Seller shall provide, if in Seller's possession, the following:

- A. Existing prior owner's title insurance policy reflecting Seller as named insured.
- B. Any recent certified survey of the Property reflecting all easements, restrictions, right-of-ways and reservations of record.
- C. Any and all environmental information in its possession related to the Property.

9. SELLER POST CLOSING REQUIREMENTS:

- A. Seller shall support the Purchaser's efforts to develop the parcels into a unified retail project consisting of either individual re-platted lots or a land condominium consisting of multiple areas in a design similar to the attached conceptual site design attached as Exhibit D that shall allow construction of various retail uses that shall include but not be limited to free standing

hotels, restaurants including fast food with drive-thru service and financial institutions, and a strip shopping center allowing for office and retail uses, except as provided in Exhibit C.

B. The Seller shall fully support the efforts of the Buyer to close street or alley touching the Property, the Additional Property or the Purchased Property and to obtain from the Mayor & City Council of Cumberland a quit claim deed at no consideration thereof. Provisions A & B of this subsection shall survive Settlement.

1. The Seller shall provide any utility facilities under its control such as sewer, water and storm water to the Property and grant any easements over its adjacent property, if any, free of charge to other utility providers such as electric, gas, telephone, cable, internet and solar to allow for development of the project by the Purchaser.

2. Seller shall provide all right of ways it has adjacent to all adjacent streets and alleys that will not be deeded to the Purchaser in the event any widening of the streets or curbs, gutters, sidewalks or green space(s) are required to be provided to any governmental agencies in order to receive development and use and occupancy approvals for the intended retail uses defined herein

10. PURCHASER POST CLOSING REQUIREMENTS:

A. Purchaser shall use commercially reasonable efforts to acquire at current market values properties remaining in the Development Area not conveyed by Seller. Any lots so acquired shall be known as Purchased Property ("Purchased Property").

B. Purchaser shall pursue development of the Property, the Additional Property and the Purchased Property ("All Property") as follows:

1. Within six (6) months of the Settlement Date, Purchaser shall present for filing with the City of Cumberland a site plan in accordance with City Ordinance requirements for Phase One.

2. Within twelve (12) months the Settlement Date, Purchaser shall present for filing with the City of Cumberland all engineering and building plans in accordance with City Ordinance requirements for Phase One.

3. Within eighteen (18) months of the Settlement Date, Purchaser shall have all building and development permits required by the City of Cumberland in hand and shall have broken ground and initiated construction for Phase One.

4. Within twenty-four (24) months of the Settlement Date, Phase One shall be fully completed and developed for commercial purposes as provided in Section I-A of this Agreement

C. Purchaser shall agree to place deed restrictions on All Property associated with this Agreement which will expire as described in Exhibit C. Deed restrictions on the specific use of All Property are listed on Exhibit C.

11. HAZARDOUS WASTE: To Seller's actual knowledge, the Property has not been used for hazardous waste disposal, and the Seller has not conducted or authorized the generation, transportation, storage, treatment or disposal on the Property in any buildings, containers, on the surface or underground, of any solid, liquid, semi-solid or gaseous materials that would constitute "hazardous wastes" as defined in the Resource Conservation and Recovery Act of 1976 (as amended), 42 U.S.C. paragraph 6901 et seq., or under any applicable federal, state or local law or regulation.

12. DISCLOSURE: Edward D. Scott is a member of the Purchaser entity and is a licensed Real Estate agent in the State of Maryland.

13. All notices between the parties or between a party and the Title Insurance Company, whether hereunder or otherwise required by law, shall be in writing and be deemed duly served and given when personally delivered to the party, or, in lieu of personal service, when deposited in the United States mail, or when sent by a nationally recognized overnight delivery service or when sent by facsimile transmission or e-mail with proof of delivery, addressed if to Seller at:

Name: Cumberland Economic Development Corporation

Address: 60 Pershing Street

Cumberland, MD 21502

Attn: Shawn P. Hershberger or designee

Phone: (301) 722-4156

Fax: (301) 759-6432

E-Mail: shawn.hershberger@choossecumberland.org

and if to Buyer at:

Name: Cumberland Gateway Real Estate LLC

Address: c/o Kline Scott Visco

117 West Patrick Street, Suite 200

Frederick, MD 21701

Attention: Edward D. Scott & Chad P. Scott

Phone: 301-694-8444

Fax: 301-694-6592

E-Mail: [eds@klinescottvisco.com](mailto:eds@klinescottvisco.com) & [chad.terraco@gmail.com](mailto:chad.terraco@gmail.com)

With a copy to

Name: Mid-Atlantic Retail Partners LLC

Address: c/o Manekin Corporation

8601 Robert Fulton Drive

Columbia, MD

Attention: Samuel Neuberger, Esq. & Richard Alter

Phone: (410) 290-1449

Fax: 410-312-4385

Email: [sneuberger@manekin.com](mailto:sneuberger@manekin.com) & [ralter@manekin.com](mailto:ralter@manekin.com)

Either party may change its address for the purposes of this paragraph by giving the other party written notice of the change in the manner provided above.

14. AGREEMENT OF PRINCIPALS: The parties to this Agreement mutually agree that it shall be binding upon them, their heirs, personal representatives, successors and assigns, that this Agreement contains the final and entire agreement between the parties hereto, and neither they nor their Broker(s) shall be bound by any terms, conditions, statements, warranties or representations, oral or written not herein contained.

15. COUNTERPARTS: This Agreement may be signed in two or more counterparts and may be delivered via email or facsimile by either party, in which case each of which shall be considered an original.



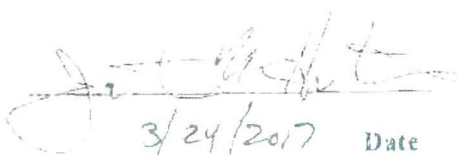
THIS AGREEMENT HAS BEEN EXECUTED IN THREE COPIES.

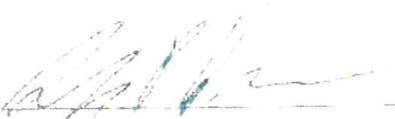
DATE OF ACCEPTANCE 3/24/17 TIME 3:33

WITNESS:

CUMBERLAND ECONOMIC  
DEVELOPMENT CORPORATION

SELLER:


  
3/24/2017 Date

By:   
3/24/17 Date

WITNESS:

CUMBERLAND GATEWAY REAL  
ESTATE, LLC

PURCHASER:

  
Date

By:   
3/24/17 Date

EXHIBIT A  
( " PROPOSED " )

Lots to be conveyed by CEDC (see plat attached):

211 Emily Street	22-013327
213 Emily Street	22-013335
219 Emily Street	22-006010
227 Emily Street	22-014447
207 Cecelia Street	22-011715
210 Cecelia Street	22-002457
211 Cecelia Street	22-008021
212 Cecelia Street	22-008455
214 Cecelia Street	22-008706
215 Cecelia Street	22-009141
218 Cecelia Street	22-007874
219 Cecelia Street	22-013696
220 Cecelia Street	22-015400
223 Cecelia Street	22-006711
225 Cecelia Street	22-006711
227 Cecelia Street	22-010069
228 Cecelia Street	22-005936
232 Cecelia Street	22-003887
234 Cecelia Street	22-011647
408 Park Street	22-006746
412 Park Street	22-013246
416 Park Street	22-013254
500 Park Street	22-005405
502 Park Street	22-007769
504 Park Street	22-012797
218 Williams Street	22-015354
226 Williams Street	22-008676
248 Williams Street	22-010255

251 Williams Street	22-014812
255 Williams Street	22-031482
405 Maryland Avenue	22-013017
501 Maryland Avenue	22-006339
503 Maryland Avenue	22-013793
507 Maryland Avenue	22-012525
517 Maryland Avenue	22-003453
519 Maryland Avenue	22-003461

EXHIBIT B  
("ADDITIONAL PROPERTY")

Lots owned by the Mayor & City Council of Cumberland (see plat attached):

Lot 404 Park Street	22-011022
Lot 406 Park Street	22-012290
Lot 414 Park Street	22-009923
Lots 257-259 Williams Street	22-022009
Lot 513 Maryland Avenue	22-015516
Lot 521 Maryland Avenue	22-014730
Lot 523 Maryland Avenue	22-014730
529 Maryland Avenue	22-010735
224 Cecelia Street	22-015346
226 Cecelia Street	22-015338
229 Cecelia Street	22-003976

# Rolling Mill Area Structure Ownership



## EXHIBIT C RESTRICTIONS AND RESERVATIONS

I. The Property, Additional Property, All Property and Purchased Property shall be subject by inclusion in the Deed of Conveyance or some other effective document to the following restrictions or limitations on the use of the Property or any part thereof:

1. No adult book stores, adult toy stores or similar type stores.
2. No bail bond operations or check cashing operations or similar type operations.
3. No tattoo or piercing operations except for ear piercing related to the operations of a jewelry store.
4. No suntan salons or similar type operations except for when it is ancillary use for a hair salon or spa.
5. No pain management clinics or similar type operations except for when it is Ancillary use for a medical practice, chiropractor or a physical therapist.
6. No methadone or similar purpose substance clinics or similar type operations.
7. No Dollar Store or any variation of that name including but not limited to Dollar General.
8. No Residential uses other than Hotel/Motels.

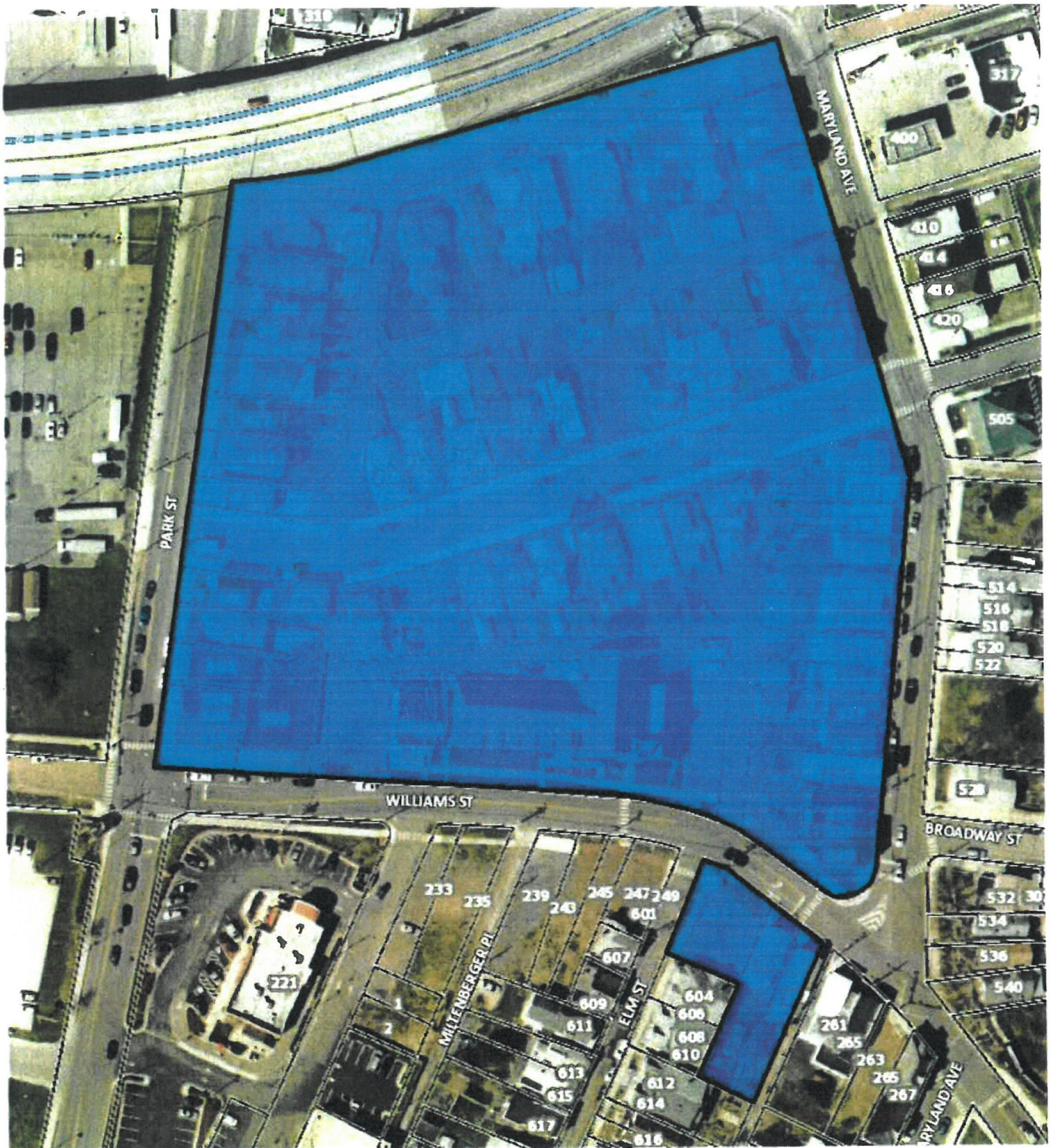
II. The Property, Additional Property, All Property and Purchased Property shall be subject by inclusion in the Deed of Conveyance to the following reservations, restrictions and limitations for a period of Ten (10) years from the date of the deed of "DEED":

No fast food operations without written application to Seller and written approval by Seller or its successor or assigns, which said approval shall not be unreasonably denied or delayed. Notwithstanding anything defined herein to the contrary, Chipotle's, Sub shops, Dunkin' Donuts, Starbucks, Sonic, IHOP, Potbelly's and ~~Hot Stuff~~ shall not be defined as a fast food use.

1. No gas stations without written application to Seller and written approval by Seller or its successor or assigns, which said approval shall not be unreasonably denied or delayed.
2. Upon actual receipt and review of a written application from Buyer, Seller shall have forty-eight (48) business hours ("Time Period") to either approve or reject the proposed use in writing or the proposed use shall be deemed approved. In the event Seller doesn't give notice of rejecting Buyer's application within the Time Period then no notice will be deemed an approval.



## EXHIBIT 2





**EXHIBIT 3**

	<b>Property Address</b>	<b>Owner</b>	<b>Deed</b>	<b>SDAT</b>
1	405 Maryland Avenue	CEDC	02171/ 00254	013017
2	501 Maryland Avenue	CEDC	02190/ 00508	006339
3	503 Maryland Avenue	CEDC	02196/ 00189	013793
4	507 Maryland Avenue	CEDC	02237/ 00142	012525
5	517 Maryland Avenue	CEDC	02182/ 00333	003453
6	519 Maryland Avenue	CEDC	02202/ 00048	003461
7	527 Maryland Avenue	CEDC	02341/00354	010794
8	218-220 Williams Street	CEDC	02209/ 00147	015354
9	226 Williams Street	CEDC	02209/00147	008676
10	234-248 Williams Street	CEDC	02246/ 00154	010255
11	251 Williams Street	CEDC	02246/00154	014812
12	255 Williams Street	CEDC	02240/ 00518	031482
13	408 Park Street	CEDC	02183/ 00278	006746
14	412 Park Street (Parcel 0232)	CEDC	02173/ 00388	013246
15	416 Park Street	CEDC	02223/ 00186	013254
16	500 Park Street	CEDC	02182/ 00446	005405
17	502 Park Street	CEDC	02190/ 00505	007769
18	504 Park Street	CEDC	02196/ 00193	012797
19	506-510 Park Street	CEDC	02209/ 00151	006878
20	211 Emily Street	CEDC	02188/ 00001	013327
21	213 Emily Street	CEDC	02171/ 00251	013335
22	219/221 Emily Street	CEDC	02202/ 00039	006010
23	227 Emily Street	CEDC	02171/ 00243	014447
24	207 Cecelia Street	CEDC	02199/ 00106	011715
25	210 Cecelia Street	CEDC	02223/ 00175	002457
26	211/213 Cecelia Street	CEDC	02246/ 00154	008021
27	212 Cecelia Street	CEDC	02223/ 00179	008455
28	214 Cecelia Street	CEDC	02182/ 00443	008706
29	215 Cecelia Street	CEDC	02190/ 00500	009141
30	218 Cecelia Street	CEDC	02196/ 00165	007874
31	219 Cecelia Street	CEDC	02183/00070	013696
32	220 Cecelia Street	CEDC	02185/ 00429	015400
33	223/225 Cecelia Street	CEDC	02196/00175	006711
34	227 Cecelia Street	CEDC	02196/ 00168	010069
35	228 Cecelia Street	CEDC	02168/ 00354	005936
36	230 Cecelia Street	CEDC	02294/ 00358	004581
37	232 Cecelia Street	CEDC	02190/ 00497	003887
38	234 Cecelia Street	CEDC	02174/ 00509	011642
39	513 Maryland Avenue	CITY	02162/ 00223	015516
40	521/523 Maryland Avenue	CITY	02158/ 00351	014730
41	529 Maryland Avenue	CITY	02145/00256	010735
42	404 Park Street	CITY	02172/ 00515	011022
43	406 Park Street	CITY	02137/ 00138	012290
44	414 Park Street	CITY	02178/ 00369	009923



45	224 Cecelia Street	CITY	02145/ 00261	015346
46	226 Cecelia Street	CITY	02145/ 00261	015338
47	229 Cecelia Street	CITY	02214/ 00416	003976
48	257-259 Williams	CITY	02168/00011	022009

**EXHIBIT 4**  
**RESTRICTIONS AND RESERVATIONS**

1. In addition to those restrictions that may exist under the terms of any zoning regulation, either now or at any time in the future, the Property shall be subject to the following covenants, restrictions and limitations which shall run with the land in perpetuity:

- A. No residential use of the Property may be made at any time. The Property shall be restricted to commercial use only.
- B. No adult book stores, adult toy stores, or similar type stores.
- C. No bail bond operations or check cashing operations or similar type operations.
- D. No tattoo or piercing operations except for ear piercing related to the operation of a jewelry store.
- E. No suntan salons or similar type operations.
- F. No pain management clinics or similar type operations.
- G. No methadone or similar purpose substance clinics or similar type operations.
- H. No discount or similar type stores for general uses.

2. The Property shall be subject to the following covenants, restrictions and limitations which shall run with the land for a period of ten (10) years from the date of the deed from Seller:

- A. No "fast food operation." The phrase "fast food operation" shall mean an operation having all of the following characteristics: (i) the operation has a drive-through window; (ii) drive-through and to-go orders constitute a significant portion of the operation's business; (iii) the operation asks for money at the time a food order is placed; (iv) the operation uses disposable dinnerware or drink containers; (v) the operation does not provide servers or waitstaff; and (vi) the operation predominantly sells food for purchase that is mass produced by a standardized method which can be dispensed quickly and inexpensively. The phrase "fast food operation" shall exclude: (i) "fast casual restaurants" which typically emphasize a higher quality of food than fast food operations, with fewer frozen and processed ingredients, and serve as an intermediate concept between fast food

operations and casual dining restaurants; and (ii) "casual dining restaurants" which typically offer table service with servers or waitstaff. The Developer has established contacts with and/or targeted the following businesses for placement in the Project Area: Dunkin Donuts, Starbucks, Sonic, IHOP, Waffle House, Chipotles, Panera Bread, Panda Express, Jersey Mike's and Five Guys. Placement of the foregoing businesses within the Project Area shall be permitted notwithstanding the prohibitions contained in this paragraph.

- B. No gasoline station or convenience store with gasoline station. The Developer has established contacts with and/or targeted the following business for placement within the Project Area: Wawa and Royal Farms. Placement of either a Wawa or a Royal Farms within the Project Area shall be permitted notwithstanding the prohibitions of this paragraph provided, however, that the facility does not exceed 1.50 acres of the Project Area.

3. The Developer may request in writing that the Mayor and City Council permit a use prohibited under Paragraph 2.A. above. The Developer's request shall not be unreasonably denied or delayed.

4. Notwithstanding any other provision of this Exhibit or the Development Agreement to the contrary, the Mayor and City Council of Cumberland may, in its sole and absolute discretion, waive a covenant, restriction and limitation contained in this Exhibit 4, in whole or part, at any time and from time to time, and for any reason or no reason.